

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

In the Matter of)

Petition for Declaratory Ruling and Request)
for Expedited Action on the July 15, 1997)
Order of the Pennsylvania Public Utility)
Commission Regarding Area Codes 412, 601,)
215 and 717)

Implementation of the Local Competition)
Provisions of the)
Telecommunications Act of 1996)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

NSD File No. L-97-42

CC Docket No. 96- 98

**REQUEST FOR CLARIFICATION AND/OR RECONSIDERATION OF THE
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS**

Pursuant to the Federal Communications Commission's ("FCC" or "Commission") Rules of Practice and Procedure, the National Association of Regulatory Utility Commissioners ("NARUC") respectfully seeks clarification and/or reconsideration of *Memorandum Opinion and Order and Order on Reconsideration* (Order) [FCC 98-224] adopted September 11, 1998 and released September 28, 1998 in the above-captioned proceeding.

Specifically, NARUC requests that the FCC do the following :

- Give careful consideration to the petitions for reconsideration filed by California, Maine, Colorado, Pennsylvania and other of NARUC's members;
- Reconsider the change to Rule 52.19, which now requires that "[a] State commission may impose a central office code rationing plan only if the State commission has decided on a specific form of area code relief . . . and has established an implementation date for that relief" (*Order* at ¶ 24.) Specifically, at a minimum, NARUC urges the FCC to authorize States to implement NXX code rationing after jeopardy has been declared and before a relief plan has been adopted or a relief date set; and

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- Clarify that the ¶ 24 statement that "State commissions do not have authority to order return of NXX codes or 1,000 number blocks" does not limit State's ability to enforce its own regulations regarding the provision of service within its boundaries, including recalling such codes under appropriate circumstances as described below.

I. DISCUSSION

- A. The FCC should give careful consideration to the petitions for reconsideration filed by California, Maine, Colorado, Pennsylvania and other of NARUC's members.*

The Pennsylvania *Order* has been the subject of much discussion and the target of great concern to NARUC's members. Indeed, at least five State commission's have felt so strongly about the issues raised by that order, that they filed individual requests. Those pleadings, which are illustrative of the concerns of many of NARUC's member commissions, include other and more specific requests for relief than the two included in this petition. Although NARUC does not specifically endorse any request for relief other than the two outlined below, we do respectfully request the FCC carefully study and give due consideration to each of NARUC member's requests.

- B. The FCC should, at a minimum, authorize States to implement NXX code rationing after jeopardy has been declared and before a relief plan has been adopted or a relief date set.*

One common concern cited by almost all State that filed petitions is the *Order's* ¶ 24 requirement that prevents States from implementing NXX code rationing in advance of adopting an area code relief plan and a specific implementation date.

Like the Pennsylvania Commission, each of NARUC members that have experienced an NPA change recently is "repeatedly asked to explain why customers have to suffer the significant costs, inconvenience and confusion engendered by the creation of new area codes when changes to

industry practices in NXX number assignment methods could substantially extend the lives of present area codes".¹ In many States, like in Pennsylvania "the problem [is] not the need for phone numbers, but rather inefficient utilization of NXXs". *Id* at 10. Many find that NXX codes are "being taken at a far faster rate than actual phone numbers or access lines" are being put in place. *Id.* at 9. Pennsylvania, California, Colorado, and others are seeking ways to encourage the more efficient utilization of NXX codes. Some less populous States may even be able to avoid an NPA split entirely if they are able to continue with competitively neutral conservation efforts.²

In States' where jeopardy has already been declared for a particular NPA, and changes are unavoidable in the near term, regulators face other issues. Without the ability to order conservation methods in advance of essentially completing proceeding to determine (1) the type code to put in place, and (2) the specific implementation date, States face an untenable problem: How to allow those most adversely affected by the implementation of a new NPA - ordinary residential and business customers - a full and fair opportunity to participate in the NPA implementation decisions. Current FCC policy enormously increases the pressure for completion of such proceedings by significantly increasing the possibility that exhaust could occur before implementation is possible. It simply does not seem logical, particularly once jeopardy is declared, that a State has to complete all of its proceedings and determine the type of NPA and implementation date before imposing

¹ See *Pennsylvania PUC's Comments in Opposition to Petition for a Declaratory Ruling and Request for Expedited Action*, at page 3.

² For example, Maine has 1 NPA, 1 CLEC, less than 750,000 active subscriber lines, 1.2 million people, 3,016,188 unused numbers in assigned NXX codes, and 935 "untainted" thousand number blocks. A competitively neutral conservation plan could delay the need for a NPA indefinitely, particularly once number portability is in place. States should have the authority to protect their consumers and businesses from the unnecessary expense of an additional NPA if a new NPA is not truly necessary and can be avoided. A rational allocation of numbering resources would benefit both the development of competition and consumers.

conservation measures. Yet, notwithstanding the constraints presented by NPAs in jeopardy and the need to ration NXX codes, the prevailing federal policy, reinforced by the FCC's Order in this docket, is to keep assigning numbers in a jeopardy NPA for the minimum 6 to 12 months a State needs to complete proceedings.

Moreover, the problem the *Order* suggests it is seeking to avoid is not affected by the restraint imposed. According to ¶ 21 of the *Order*, States should not be allowed to impose conservation measures before a relief decision is made because that could result in "varying and inconsistent regimes" which could interfere with the routing of calls or hamper the industry's efforts at forecasting and planning for the exhaust of the North American Numbering Plan. Paragraph 24 makes clear that, *after* completing proceedings, States are free to impose number rationing plans and usage thresholds. What is not clear is why imposing such conservation measures after, as opposed to before, the proceedings, increases the prospects for uniformity. NARUC respectfully suggests that there will be no difference in uniformity whether such measures are ordered before or after final State implementation decisions. There will be, however, a huge difference in societal costs and consumer impacts if States are precluded from imposing conservation methods until after agreeing to implement a new area code, particularly if, as is likely, the new code is implemented sooner than necessary.

Accordingly, NARUC respectfully requests that the FCC reconsider this aspect of the Order and , at a minimum, allow States to impose conservation methods once jeopardy has been declared.

C. The FCC should clarify the scope of State authority to order the return of NXX codes.

In ¶ 24 of the *Order*, the FCC states that "State commissions do not have authority to order return of NXX codes or 1,000 number blocks to the code administrator." This paragraph could be interpreted to preclude States from managing the numbering resource in an efficient manner by apparently prohibiting them from requiring reclamation of unused central office codes or thousand blocks. If a State is considering an area code exhaust situation and data shows a carrier with excess resources not necessary to meet that carrier's forecasted demand, the States should be allowed to require that carrier to return the resource to the administrator. Leaving that responsibility to the FCC would defeat the entire purpose of efficient management of area code relief, because of time constraints. In addition, States are in a much better position to judge the nature of a carrier's need for numbering resources in that State.

Such an interpretation could also unreasonably limit a State's ability to enforce its own rules and regulations regarding the provision of service within its boundaries. Commissions would have no power to prevent carriers who wrongfully obtained or used numbering resources from continuing to use those resources to the detriment of other properly certified and operating carriers. Reclamation of improperly obtained or used codes could have a substantial impact on code exhaust forecasts which, in turn, inform a State's decision regarding the need to implement a new area code.

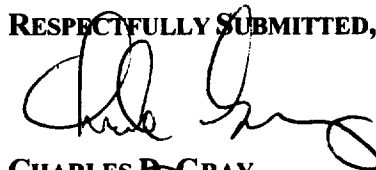
Accordingly, NARUC respectfully requests that the FCC clarify its *Order* to assure that States are not inappropriately limited in their ability to reclaim NXX codes and enforce their own regulations regarding the provision of service within their boundaries.

II. CONCLUSION

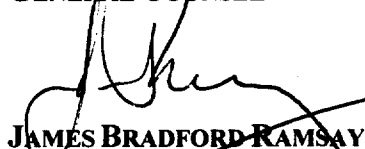
For the foregoing reasons, NARUC respectfully requests the FCC do the following:

- Authorize States to implement NXX code rationing after jeopardy has been declared and before a relief plan has been adopted or a relief date set;
- Clarify that the ¶ 24 statement that "State commissions do not have authority to order return of NXX codes or 1,000 number blocks" does not limit State's ability to enforce its own regulations regarding the provision of service within its boundaries, including recalling such codes under appropriate circumstances as described above; and
- Give careful consideration to the petitions for reconsideration filed by California, Maine, Colorado, Pennsylvania and other of NARUC's members.

RESPECTFULLY SUBMITTED,



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ASSISTANT GENERAL COUNSEL**

**NATIONAL ASSOCIATION OF
REGULATORY UTILITY COMMISSIONERS**

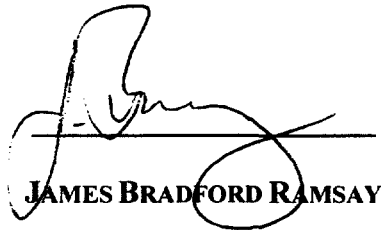
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DECEMBER 16, 1998

CERTIFICATE OF SERVICE

**I, JAMES BRADFORD RAMSAY, DO CERTIFY THAT I HAVE SERVED A COPY OF THE
FOREGOING ON THE PERSONS LISTED ON THE ATTACHED SERVICE LIST THIS 16TH DAY OF
DECEMBER 1998.**



JAMES BRADFORD RAMSAY